

MONTANA LEGISLATIVE HISTORY

Chapter 604 19 93

Bill H _____ S 252

Original bill & history ☒ c

H. Committee on JUDICIARY

Hearing Date(s) 3/23 ☒ c

EXEC ACTION ~~4/14~~ ☒ c

_____ c

_____ c

Date Out _____ c

S. Committee on JUDICIARY

Hearing Date(s) 2/5 ☒ c

EXEC. ACTION 2/8 ☒ c

_____ c

_____ c

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

FREE CONFERENCE COMMITTEE REPORT 4/14 ☒ c

4/01 3RD READING CONCURRED 52 47
 RETURNED TO SENATE
 4/06 SIGNED BY PRESIDENT
 4/07 SIGNED BY SPEAKER
 4/13 TRANSMITTED TO GOVERNOR
 4/16 SIGNED BY GOVERNOR
 CHAPTER NUMBER 371
 EFFECTIVE DATE: 10/01/93

SB 249 INTRODUCED BY YELLOWTAIL
 CLARIFY TELEMETRY DEVICE REQUIREMENT FOR TRAINS
 BY REQUEST OF SENATE JUDICIARY COMMITTEE

1/25 INTRODUCED
 1/25 REFERRED TO JUDICIARY
 1/25 FIRST READING
 2/09 HEARING
 2/10 COMMITTEE REPORT—BILL PASSED
 2/11 2ND READING PASSED 49 0
 2/12 3RD READING PASSED 50 0

TRANSMITTED TO HOUSE
 2/23 REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT
 2/23 FIRST READING
 3/15 HEARING
 3/15 COMMITTEE REPORT—BILL CONCURRED
 3/29 2ND READING CONCURRED 93 7
 3/31 3RD READING CONCURRED 92 7

RETURNED TO SENATE
 4/06 SIGNED BY PRESIDENT
 4/07 SIGNED BY SPEAKER
 4/12 TRANSMITTED TO GOVERNOR
 4/15 SIGNED BY GOVERNOR
 CHAPTER NUMBER 372
 EFFECTIVE DATE: 10/01/93

SB 250 INTRODUCED BY YELLOWTAIL
 REMOVE COLLECTIVE BARGAINING STRATEGY MEETING EXCEPTION TO
 OPEN MEETING LAW
 BY REQUEST OF SENATE JUDICIARY COMMITTEE

1/25 INTRODUCED
 1/25 REFERRED TO JUDICIARY
 1/25 FIRST READING
 2/09 HEARING
 2/16 COMMITTEE REPORT—BILL PASSED AS AMENDED 50 0
 2/20 2ND READING PASSED 46 2
 2/22 3RD READING PASSED

TRANSMITTED TO HOUSE
 2/23 REFERRED TO EDUCATION & CULTURAL RESOURCES
 2/23 FIRST READING
 3/03 HEARING
 3/04 COMMITTEE REPORT—BILL CONCURRED
 3/06 2ND READING CONCURRED 66 33
 3/09 3RD READING CONCURRED 65 32

RETURNED TO SENATE
 3/13 SIGNED BY PRESIDENT
 3/15 SIGNED BY SPEAKER
 3/16 TRANSMITTED TO GOVERNOR

3/18 SIGNED BY GOVERNOR
 CHAPTER NUMBER 123
 EFFECTIVE DATE: 10/01/93

SB 251 INTRODUCED BY TOWE
 CLARIFY CITY COURT JURISDICTION
 BY REQUEST OF SENATE JUDICIARY COMMITTEE

1/25 INTRODUCED
 1/25 REFERRED TO JUDICIARY
 1/25 FIRST READING
 2/05 HEARING
 2/06 COMMITTEE REPORT—BILL PASSED
 2/08 2ND READING PASSED 49 0
 2/09 3RD READING PASSED 50 0

TRANSMITTED TO HOUSE
 2/10 REFERRED TO JUDICIARY
 2/10 FIRST READING
 3/12 HEARING
 3/17 COMMITTEE REPORT—BILL CONCURRED AS AMENDED
 3/27 2ND READING CONCURRED 78 14
 3/30 3RD READING CONCURRED 86 14

RETURNED TO SENATE WITH AMENDMENTS
 4/02 2ND READING AMENDMENTS CONCURRED 47 0
 4/03 3RD READING AMENDMENTS CONCURRED 47 0

4/07 SIGNED BY PRESIDENT
 4/07 SIGNED BY SPEAKER
 4/13 TRANSMITTED TO GOVERNOR
 4/14 SIGNED BY GOVERNOR
 CHAPTER NUMBER 343
 EFFECTIVE DATE: 10/01/93



SB 252 INTRODUCED BY HERTEL
 EXEMPT PROFESSIONAL LAND SURVEYORS FROM CRIMINAL TRESPASS
 LAW

1/25 INTRODUCED
 1/25 REFERRED TO JUDICIARY
 1/25 FIRST READING
 2/05 HEARING
 2/09 COMMITTEE REPORT—BILL PASSED AS AMENDED
 2/10 2ND READING PASSED 40 8
 2/11 3RD READING PASSED 46 4

TRANSMITTED TO HOUSE
 2/23 REFERRED TO JUDICIARY
 2/23 FIRST READING
 3/23 HEARING
 3/23 COMMITTEE REPORT—BILL CONCURRED
 3/29 2ND READING CONCURRED AS AMENDED 64 35
 3/31 3RD READING CONCURRED 57 42

RETURNED TO SENATE WITH AMENDMENTS
 4/03 2ND READING AMENDMENTS NOT CONCURRED 31 14
 4/06 FREE CONFERENCE COMMITTEE APPOINTED
 4/19 FREE CONFERENCE COMMITTEE REPORT NO. 1
 4/20 2ND READING FREE CONFERENCE COMMITTEE
 REPORT NO. 1 ADOPTED 49 0
 4/21 3RD READING FREE CONFERENCE COMMITTEE
 REPORT NO. 1 ADOPTED 49 0

	HOUSE		
4/07	FREE CONFERENCE COMMITTEE APPOINTED		
4/19	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/20	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	80	15
4/20	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	75	23
4/24	SIGNED BY PRESIDENT		
4/24	SIGNED BY SPEAKER		
4/27	TRANSMITTED TO GOVERNOR		
5/03	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 604		
	EFFECTIVE DATE: 10/01/93		
SB 253	INTRODUCED BY GAGE		
	ELIMINATE ENVIRONMENTAL QUALITY COUNCIL		
1/26	INTRODUCED		
1/26	REFERRED TO NATURAL RESOURCES		
1/26	FIRST READING		
1/26	FISCAL NOTE REQUESTED		
2/01	FISCAL NOTE RECEIVED		
2/02	FISCAL NOTE PRINTED		
2/08	HEARING		
2/10	TABLED IN COMMITTEE		
SB 254	INTRODUCED BY GAGE		
	ELIMINATE RETAIL AND WHOLESALE PRICE REGULATION OF MILK		
1/26	INTRODUCED		
1/26	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
1/26	FIRST READING		
1/26	FISCAL NOTE REQUESTED		
1/29	HEARING		
1/30	FISCAL NOTE RECEIVED		
2/01	FISCAL NOTE PRINTED		
2/03	COMMITTEE REPORT—BILL NOT PASSED		
2/03	ADVERSE COMMITTEE REPORT ADOPTED	35	13
2/03	MOTION FAILED TO RECONSIDER ADOPTION OF ADVERSE COMMITTEE REPORT	23	24
SB 255	INTRODUCED BY SWYSGOOD		
	REVISE MOTOR CARRIER LAW REGARDING LIVESTOCK TRANSPORTATION		
1/26	INTRODUCED		
1/26	REFERRED TO HIGHWAYS & TRANSPORTATION		
1/26	FIRST READING		
2/02	HEARING		
2/05	COMMITTEE REPORT—BILL PASSED		
2/06	2ND READING PASSED	40	8
2/08	3RD READING PASSED	42	8
	TRANSMITTED TO HOUSE		
2/09	REFERRED TO HIGHWAYS & TRANSPORTATION		
2/09	FIRST READING		
3/08	HEARING		
3/17	TABLED IN COMMITTEE		
3/29	COMMITTEE REPORT—BILL CONCURRED		
3/30	2ND READING CONCUR MOTION FAILED	34	62
3/31	RECONSIDERED PREVIOUS ACTION	60	38
4/20	2ND READING CONCURRED	55	43

	4/21	3RD READING FAILED	41	55
SB 256	INTRODUCED BY SWYSGOOD			
	DEFINE NONRESIDENT EMPLOYEE OR WORKER IN THIS STATE FOR WORKERS' COMPENSATION PURPOSES			
	1/26	INTRODUCED		
	1/26	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
	1/26	FIRST READING		
	2/09	HEARING		
	2/10	COMMITTEE REPORT—BILL PASSED AS AMENDED		
	2/11	2ND READING PASSED	49	0
	2/12	3RD READING PASSED	50	0
		TRANSMITTED TO HOUSE		
	2/23	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
	2/23	FIRST READING		
	3/04	HEARING		
	3/16	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
	3/27	2ND READING CONCURRED	94	1
	3/30	3RD READING CONCURRED	100	0
		RETURNED TO SENATE WITH AMENDMENTS		
	4/05	2ND READING AMENDMENTS CONCURRED	50	0
	4/06	3RD READING AMENDMENTS CONCURRED	50	0
	4/13	SIGNED BY PRESIDENT		
	4/15	SIGNED BY SPEAKER		
	4/16	TRANSMITTED TO GOVERNOR		
	4/21	SIGNED BY GOVERNOR		
		CHAPTER NUMBER 458		
		EFFECTIVE DATE: 04/21/93		
SB 257	INTRODUCED BY HARP, ET AL.			
	INCREASE GAS AND FUEL TAX BY 4 CENTS PER GALLON IN 1993, AND 3 CENTS IN 1994			
	1/26	INTRODUCED		
	1/26	REFERRED TO TAXATION		
	1/26	FIRST READING		
	1/26	FISCAL NOTE REQUESTED		
	2/02	FISCAL NOTE RECEIVED		
	2/03	FISCAL NOTE PRINTED		
	2/19	HEARING		
	3/27	COMMITTEE REPORT—BILL PASSED AS AMENDED		
	3/27	REVISED FISCAL NOTE REQUESTED		
	3/27	REVISED FISCAL NOTE RECEIVED		
	3/29	REVISED FISCAL NOTE PRINTED		
	3/29	2ND READING PASSED	36	12
	3/30	3RD READING PASSED	34	16
		TRANSMITTED TO HOUSE		
	3/31	REFERRED TO TAXATION		
	3/31	FIRST READING		
	4/06	HEARING		
	4/07	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
	4/12	2ND READING CONCUR AS AMENDED		
		MOTION FAILED	41	56
	4/12	RECONSIDERED PREVIOUS ACTION	76	22
	4/12	2ND READING CONCURRED AS AMENDED	57	42
	4/13	3RD READING CONCURRED	54	44
		RETURNED TO SENATE WITH AMENDMENTS		
		(NOTE: HOUSE 2ND READING AMENDMENTS NULLIFIED HOUSE COMMITTEE AMENDMENTS,		

SENATE BILL NO. 252

INTRODUCED BY HERTEL

IN THE SENATE

JANUARY 25, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 9, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
	PRINTING REPORT.
FEBRUARY 10, 1993	SECOND READING, DO PASS.
FEBRUARY 11, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 46; NOES, 4.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 23, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 23, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 29, 1993	SECOND READING, CONCURRED IN AS AMENDED.
MARCH 31, 1993	THIRD READING, CONCURRED IN. AYES, 57; NOES, 42.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 3, 1993	SECOND READING, AMENDMENTS NOT CONCURRED IN.
APRIL 6, 1993	ON MOTION, FREE CONFERENCE COMMITTEE REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 7, 1993

ON MOTION, FREE CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

APRIL 19, 1993

FREE CONFERENCE COMMITTEE REPORT
ADOPTED.

IN THE SENATE

APRIL 20, 1993

SECOND READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

APRIL 21, 1993

THIRD READING, FREE CONFERENCE
COMMITTEE REPORT ADOPTED.

APRIL 22, 1993

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 Senate BILL NO. 252
 2 INTRODUCED BY Hertel
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING A
 5 PROFESSIONAL LAND SURVEYOR OR OTHER QUALIFIED PERSON FROM
 6 THE CRIMINAL TRESPASS LAW WHEN ENTRY TO LAND IS FOR SURVEY
 7 PURPOSES; PROVIDING FOR NOTICE TO THE LANDOWNER OF A PENDING
 8 SURVEY; ESTABLISHING NOTICE CONDITIONS AND PROVISIONS FOR
 9 ENTRY TO THE LAND; ESTABLISHING LIABILITY FOR DAMAGES AND
 10 INJURY OCCURRING ON THE LAND DURING A SURVEY; AND AMENDING
 11 SECTION 45-6-203, MCA."
 12

13 WHEREAS, the Legislature finds that in the interest of
 14 the public health, safety, and welfare, the entry onto
 15 private property by a professional land surveyor in the
 16 performance of the surveyor's legal duties and obligations
 17 should not be considered criminal trespass.
 18

19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20 **Section 1.** Section 45-6-203, MCA, is amended to read:

21 "45-6-203. Criminal trespass to property. (1) A Except
 22 as provided in [section 2], a person commits the offense of
 23 criminal trespass to property if he the person knowingly:

24 (a) enters or remains unlawfully in an occupied
 25 structure; or

1 (b) enters or remains unlawfully in or upon the
 2 premises of another.

3 (2) A person convicted of the offense of criminal
 4 trespass to property shall be fined not to exceed \$500 or be
 5 imprisoned in the county jail for any term not to exceed 6
 6 months, or both."

7 **NEW SECTION. Section 2.** Entry to property by
 8 professional land surveyor or other qualified person --
 9 trespass exception -- notice -- liability. (1) Subject to
 10 the conditions and restrictions of this section, the
 11 provisions of 45-6-203 do not apply to a person who is
 12 licensed or registered under Title 37, chapter 67, part 3,
 13 as a professional land surveyor, as defined in 37-67-101, or
 14 to a person acting under the direct supervision of a
 15 professional land surveyor as an employee, agent, or
 16 representative.

17 (2) A person qualified under subsection (1) may enter
 18 public or private land to investigate and use boundary
 19 evidence and perform boundary surveys if the notice
 20 requirements of subsection (3) are met.

21 (3) (a) At least 15 days before the desired date of
 22 entry to land, a professional land surveyor shall give
 23 notice to the owner of the land, by certified mail, return
 24 receipt requested. The notice must contain the following
 25 information:

1 (i) the identity of the person for whom the survey is
2 being performed;
3 (ii) the purpose for which the survey is being
4 performed;
5 (iii) the name of the employer of the professional land
6 surveyor;
7 (iv) the identity of the professional land surveyor;
8 (v) the dates, times, and location of entry to the
9 land, including the estimated number of entries;
10 (vi) a timetable for completion of the survey, including
11 an estimated completion date; and
12 (vii) a statement requesting the landowner to provide
13 the surveyor with the name of each person who occupies the
14 land as a tenant or lessee.
15 (b) A landowner may waive the notice requirement of
16 this subsection (3), either orally or in writing.
17 (c) This section does not impose liability upon a
18 landowner who fails or refuses to provide the requested
19 entry.
20 (4) (a) If a landowner does not acknowledge receipt of
21 the notice within 15 days, a person qualified under
22 subsection (1) may enter the land pursuant to the
23 specifications given in the notice.
24 (b) If a landowner acknowledges receipt of the notice
25 within 15 days, the landowner may modify the access

1 provisions of the notice, as long as the modifications do
2 not unreasonably restrict completion of the survey.
3 (5) Persons qualified under subsection (1) who enter
4 land pursuant to this section shall carry on their person
5 identification sufficient to identify themselves and their
6 employer or principal and shall present the identification
7 upon request.
8 (6) Vehicular access to perform surveys is limited to
9 established roads and trails, unless approval for other
10 vehicular access is granted by the landowner.
11 (7) Approval of the landowner is required for the
12 clearing of trees, brush, or other vegetation.
13 (8) A landowner may request a person qualified under
14 subsection (1) who enters land pursuant to this section to
15 wash any vehicle prior to entry in order to remove mud and
16 debris that might carry noxious weeds or noxious weed seeds.
17 The person may request that the landowner be present at the
18 time of any entry to inspect the vehicle under the terms of
19 this subsection.
20 (9) A person qualified under subsection (1) who enters
21 land pursuant to this section is liable for actual damages
22 caused during entry to and stay on the land. A person
23 qualified under subsection (1) who enters land for survey
24 purposes does not have a civil cause of action against a
25 landowner or lessee for personal injury or property damage

1 incurred while on the land, except when the injury or
2 damages were purposely or knowingly caused by the landowner
3 or lessee.

4 (10) As an act of good will and in order to keep the
5 landowner informed, a professional land surveyor shall
6 supply the landowner with information on located,
7 established, or reestablished corners that lie on the land
8 or that may affect the boundaries of the land. Upon request,
9 the professional land surveyor shall provide the landowner
10 with a copy of any relevant survey filed or recorded.

11 NEW SECTION. **Section 3.** Codification instruction.
12 [Section 2] is intended to be codified as an integral part
13 of Title 70, chapter 16, and the provisions of Title 70,
14 chapter 16, apply to [section 2].

-End-

MINUTES

**MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By Senator Doherty, on February 5, 1993, at 10:08 a.m.

ROLL CALL

Members Present:

Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: Sen. Yellowtail

Members Absent: NONE

Staff Present: Valencia Lane, Legislative Council
Rebecca Court, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 252
SB 251
SB 258

Executive Action: SB 251

HEARING ON SB 252

Opening Statement by Sponsor:

Senator Hertel, District 15, said SB 252 is important to land surveyors. The title of SB 252 is an act exempting a professional surveyor or other qualified persons from the criminal trespass law when entry to land is for survey purposes." When conducting a land survey, a surveyor must go on the property adjacent to the land being surveyed, to find the monuments or

stakes. Surveyors have to use these monuments to complete the survey. The surveyor must be licensed or an employee of the licensed surveyor. Before entering the land adjacent to the property being surveyed, the surveyor must let the land owner know of the desired date of entry and meet all requirements for conducting a survey. The surveyor is liable for damages and injuries occurring on the land during the survey. Senator Hertel said there is a need for SB 252 because there have been instances when surveyors were not able to perform a proper survey without a great deal of problems. SB 252 enables the surveyors to complete their project and conduct an accurate survey for those involved. Senator Hertel proposed and explained an amendment. (Exhibit #1)

Proponents' Testimony:

Stewart Nash, Montana Association of Registered Land Surveyors, read from prepared testimony. (Exhibit #2) Mr. Nash submitted letters. (Exhibit #3, Exhibit #4)

Virginia Mueller, Montana Association of Registered Land Surveyors, reiterated Mr. Nash's testimony. Ms. Mueller said state statutes require land surveyors to follow federal instructions when performing surveys. It is not often land surveyors are denied access in Montana. Ms. Mueller said in 18 years that she has been a land surveyor she has been denied access to someones property three times. Ms. Mueller said in one instance she had to commit a minor trespass to conduct a survey. Ms. Mueller said when land surveyors are denied access to a property, the surveys cannot be performed until there is permission to go on the property, which in some instances must be court ordered. Ms. Mueller said SB 252 would facilitate the work of land surveyors and would appreciate the support in the passage of SB 252.

Opponents' Testimony:

Russell Hill, Montana Trial Lawyers Association, read from prepared testimony. (Exhibit #5) Mr. Hill submitted amendments for consideration. (Exhibit #6)

Questions From Committee Members and Responses:

Senator Grosfield asked Mr. Nash about page 4, line 11 and 12. Mr. Nash said at one time land surveyors cut trees in order to keep a straight line. Today, land surveyors do not cut trees down because of new technology and methods that are used. Mr. Nash said there may be some limbing of trees in order to see a line of sight, but that is limited. When a final line is established, the land surveyors mark the trees without cutting any of the trees down. Land surveyors are very careful on private lands.

Senator Halligan asked Senator Hertel if SB 252 would exempt land surveyors from criminal and civil actions. Senator Hertel said

the intent of the title was to eliminate criminal action, but the feels civil actions should be included.

Senator Towe asked Mr. Nash about instruments that are used in conducting land surveys. Mr. Nash said the instruments used turn angles and measure distances in a reflected prism. The prism reflects a direct beam of light into the instrument and measures the distance. Mr. Nash said the instruments are very precise.

Senator Towe asked Mr. Nash about surveying adjoining land. Mr. Nash said if a client owned part of a southwest and southeast corner of a section and wanted the boundaries marked, the only way to determine where the boundaries are is to go to all four section corners outside the property, and all four quarter section corners, to mark the section. Mr. Nash said in order to conduct those surveys permission would be needed from all the land owners to gain access to their land. Mr. Nash said permission is often given, but there are some instances when permission is not given.

Senator Towe asked Mr. Nash about land surveyors damaging a persons property. Mr. Nash said occasionally land surveyors have to dig for a corner to find the original stones or markers, which sometimes is in a yard or field. Mr. Nash said costs should be given to a person if damage was done to their property. Mr. Nash said that would be the only damage that would be caused by land surveyors.

Senator Towe asked Mr. Nash about digging up sacred sights. Mr. Nash said if a monument is set below the surface, the best method to eliminate more surveys would be to dig up the monument and reference it with pins and other types of monuments outside of that area. Mr. Nash said then other surveyors would not have to dig up the monument again.

Senator Bartlett asked Mr. Nash about the amendments proposed by the Montana Trial Lawyers Association. Mr. Nash said the amendments sounded as if the land surveyors and the land owners were not protected for a for civil action. Mr. Nash said SB 252 allows land surveyors to obtain access to a property to find a survey monument. Mr. Nash said land surveyors work to serve clients and the public, and are not there to destroy property. If a land surveyor makes an error, they would be held responsible. SB 252 covers damages, and would hold a surveyor liable for any damage that occurs. SB 252 protects the land owners and land surveyors.

Senator Halligan asked Mr. Nash about incidents of lawsuits against surveyors for damage of land. Mr. Nash was not aware of any lawsuits.

Senator Halligan asked Mr. Nash what the land surveyors wanted. Mr. Nash said land surveyors want access to land that is to be

surveyed. If denied access, they want a legal way to obtain access without having to go through a court procedure to get on that property within a reasonable amount of time.

Senator Doherty asked Mr. Nash about limiting liability to actual damages if a land surveyor caused a fire on property that was being surveyed. Mr. Nash said many surveyors have contracts with the National Forest Service and are liable for fires that they start in a National Forest. Mr. Nash said the surveyors know the consequences and do not see a problem with limiting liability to actual damages.

Senator Doherty asked Mr. Nash if land owners would like to have damages limited. Mr. Nash said that the land owners would probably not want them limited.

Closing by Sponsor:

Senator Hertel said there is a need for SB 252. Senator Hertel said SB 252 would not be detrimental to adjoining land and land owners. Surveyors are trying to cooperate to the full extent with the land owners. Senator Hertel asked the Committee to support SB 242 with a DO PASS recommendation.

HEARING ON SB 251

Opening Statement by Sponsor:

Senator Towe, District 46, said Section one of SB 251 brings in city court judges as well as justices of the peace, for the issuance of summons so city court judges can issue a summons out of a county. The second part of SB 251 deals with the Landlord Tenant Act of 1977. It brings the city court and justice court in as the court of original jurisdiction for disputes between landlords and tenants.

Proponents' Testimony:

Craig Hoppe, Montana Magistrates Association, said SB 251 addresses the area in which city courts have concurrent jurisdiction. SB 251 states that city courts have concurred jurisdiction and provides for the mechanism by which city courts operate.

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

NONE

ROLL CALL

SENATE COMMITTEE

Judiciary

DATE 2-5-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail			X
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

FC8

Attach to each day's minutes

Amendments to Senate Bill No. 252
White Reading Copy

Requested by Tom McNab
For the Committee on Judiciary

Prepared by Doug Sternberg, Council Staff

February 5, 1993

1. Page 4, line 22.

Following: "land"

Insert: ", except for damages caused by the introduction or
spread of noxious weeds when a landowner has inspected the
person's vehicle in accordance with subsection (8)"

SENATE JUDICIARY
FILED NO. 1
2-5-93
SB252

CONCERNING AN EXEMPTION TO THE CRIMINAL TRESPASS LAWS FOR CERTAIN SB 252

INDIVIDUALS WHO ENTER PROPERTY FOR SURVEY PURPOSES

the absence of the right of entry to the Registered Professional Land Surveyor of Montana, or those who are under the direct supervision of such a person as an employee, agent or representative denies them one of the basic tools by which to competently complete their work and remain within the laws and abide by the rules governing surveys.

any surveyors have been denied access to private lands, at one time or another, in attempting to conduct surveys for their clientele. This denial may occur at some point in time after a previous illegal trespass by an inconsiderate surveyor, or because of prior relationships between neighbors, a "bad" survey by a previous surveyor - therefore they are all incompetent, or I just don't like the Highway Department and the power company charges too much.

Whatever the reason, ^{for the denial} the land surveyor cannot always determine accurate property corners and boundaries of their client and adjoining properties without having all of the controlling corners and evidence at their disposal.

The Montana Corner Recordation Act 70-22-102 gives the following as its purpose: It is the purpose of this part to protect and perpetuate public land survey corners and information concerning the location of such corners by requiring the systematic establishment of monuments and recording of information concerning the marking of the location of such public land survey corners and to allow the systematic location of other property corners thereby providing for property security and a coherent system of property location and identification of ownerships and thereby eliminating the repeated necessity for reestablishment and relocations of such corners where once they are established and located.

When this purpose is denied by a land owner, it is also a denial for the land surveyor to carry out the guidelines as outlined in the Professional Engineers and Land Surveyors Laws and Rules Sub Chapter 12, Rules of Professional Conduct 8.48.1202 SAFETY, HEALTH AND WELFARE OF THE PUBLIC PARAMOUNT IN THE PERFORMANCE OF PROFESSIONAL DUTIES

1) Registrants shall hold paramount the safety, health and welfare of the public in the performance of their professional duties.

a) Registrants shall at all times recognize that their primary obligation is to protect the safety, health, property and welfare of the public. If their professional judgment is overruled under circumstances where the safety, health, property or welfare of the public are endangered, they shall notify their employer or client and such other authority as may be appropriate. *Access denial to perform accurate surveys is overruling the surveyors best judgment and is a detriment to the public's welfare.*

The following State and Federal regulations including pertinent definitions are the basic laws in which a Registered Professional Land Surveyor must adhere to, in effort to carry out the previous regulation.

PROFESSIONAL ENGINEERS AND LAND SURVEYORS LAWS AND RULES

Definitions 37-67-101(7) "Practice of Land Surveying" means any service or work, the performance of which requires the application of special knowledge of the principles of mathematics, physical sciences, applied sciences and:

- the principles of property boundary law to the recovery and preservation of evidence pertaining to earlier land surveys;
- measurement and allocation of lines, angles, elevations and coordinate systems;
- monumenting of property boundaries;

Definitions 70-22-103

- (1) A "property corner" is a geographic point on the surface of the earth and is on, a part of, and controls a property line.
- (2) A "property controlling corner" for a property is a public land survey corner or any property corner which does not lie on a property line of the property in question but which controls the location of one or more of the property corners of the property in question. *These controlling corners are the key to most surveys*
- (3) A "public land survey corner" is any corner actually established and monumented in an original survey or resurvey used as a basis of legal description for issuing a patent for the land to a private person from the United States government.
- (4) A "corner", unless otherwise qualified, means a property corner or a property controlling corner or a public land survey corner or any combination of these.
- (5) An "accessory to a corner" is any exclusively identifiable physical object whose spatial relationship to the corner is recorded. Accessories may be bearing trees, bearing objects, monuments, reference monuments, line trees, pits, mounds, charcoal-filled bottles, steel or wooden stakes, or other objects.
- (6) A "monument" is an accessory that is presumed to occupy the exact position of a corner.
- (7) A "reference monument" is a special monument that does not occupy the same geographical position as the corner itself but whose spatial relationship to the corner is recorded and which serves to witness the corner.

MONTANA'S SUBDIVISION AND SURVEYING LAWS AND REGULATIONS

Chapter 3, Part 4 - Survey Requirements 76-3-402(3) All divisions of sections into aliquot parts and retracement of lines must conform to United States Bureau of Land Management instructions, *over*

SUB-CHAPTER 30 - UNIFORM STANDARDS FOR MONUMENTATION, CERTIFICATES OF SURVEY AND FINAL SUBDIVISION PLATS.

8.94.3001 (c) Prior to the filing of any subdivision plat or certificate of survey for record the land surveyor shall confirm the location of sufficient monuments to reasonably assure the perpetuation or reestablishment of any corner or boundary or retracement of the survey -----.

(e) The plat or certificate shall clearly show the relationship of all adjacent monuments of record and the relationship of the monuments of record to monuments set after filing.

(h) If the land surveyor uses any previously established monument he must confirm the location of the monument. If properly confirmed and shown and described on the filed certificate or plat, such a monument shall be considered a monument of record.

CORNER RECORDATION ACT

70-22-110 Surveyor to rehabilitate monument. In every case where a corner record of a public land survey corner is required to be filed under the provisions of this part, the surveyor must reconstruct or rehabilitate the monument of such corner and accessories to such corner so that the same shall be left by him in such physical condition that it remains as permanent a monument as is reasonably possible and so that the same may be reasonably expected to be located with facility at all times in the future.

MANUAL OF SURVEYING INSTRUCTIONS 1973
U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT,

THE DEPENDANT RESURVEY

6-25 The dependent resurvey is designed to restore the original conditions of the official survey according to the record. It is based, first, upon identified original corners and other acceptable points of control, and, second, upon the restoration of lost corners by proportionate measurement in harmony with the record of the original survey.

5-6 The recovery of previously established corners is simplified by projecting retracements from known points. The final search for a monument should cover the zone surrounding one, two, three, or four points determined by connection with known corners. These corners will ultimately control the relocation in case the corner being searched for is declared lost.

5-8 No decision should be made in regard to the restoration of a corner until every means has been exercised that might aid in identifying its true original position. The retracements will indicate the probable position and will show what discrepancies are to be expected. Any supplemental survey record or testimony should then be considered in the light of the facts thus developed.

The supplement to the 1973 Manual "Restoration of Lost or Obliterated Corners and Subdivision of Sections " States on page 25 under FUNCTION OF THE LOCAL SURVEYOR. --- His work may be simple, or quite complex, depending largely upon the existence of the original corner monuments or acceptable perpetuations of the corner positions.

Since the corners established in the original survey are controlling, it is essential that these corners be found, or properly restored, before the actual field work involving the subdivision-of-section is undertaken. The section boundaries should be retraced to develop the actual bearing and lengths of the lines between the corners. *back*

These regulations are paramount procedures by which the professional land surveyor performs their field work. The necessity to gain entry onto any lands that contains evidence which will aid in the proper restoration or identification of corners and monuments, is of the utmost importance.

By gaining this much needed tool, the surveying profession will be obligated to exercise care and proper restraint, respecting the property over which they perform surveys. They should be held responsible for any damages incurred upon entering private lands and should enter only after proper notification.

The following proposed bill is a serious attempt to address these concerns.

EXHIBIT 2
E 2-5-93
SB 252

DEPARTMENT OF STATE LANDS



STAN STEPHENS, GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(406) 444-2074

1625 ELEVENTH AVENUE
HELENA, MONTANA 59620

December 4, 1992

Stewart Nash
Past President
P.O. Box 631
Lewistown, MT 59457

SENATE JUDICIARY
EXHIBIT NO. 5
DATE 2-5-93
BILL NO. SB252

RE: Proposed legislation for trespass for survey purposes.

Dear Mr. Nash:

The Department of State Lands (DSL) has reviewed the proposed legislation you asked us to review. The DSL legal staff saw no obvious legal pitfalls and did not see any reason why we could not support the legislation.

The Land Administration Division also reviewed and felt the proposed language looked good. The Division did have some comments which you may wish to consider:

The ten day response time may not be sufficient for public agencies. It may be difficult in some situations for the DSL to respond regarding any stipulations within ten days. You may wish to consider extending this time frame.

A common concern of landowners is off-road vehicle travel. You may wish to consider adding a restriction that vehicular trespass by surveyors is limited to established roads unless pre-approved by the landowner.

Does the "damages" provision include clearing of shrubs, trees and other vegetation? Should this type of activity require pre-approval of the landowner?

Another common concern of landowners regarding trespass is with the spread of noxious weeds. Does the "damages" provision cover the noxious weed issue or should it be covered separately?

Perhaps another consideration which might make the proposal more palatable to landowners would be to provide a copy of the completed surveys to the landowner.

Stewart Nash
December 4, 1992
Page 2

Thank you for the opportunity to review and comment on this proposed legislation. Feel free to contact me if you have questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "M. Jeff Hagener". The signature is fluid and cursive, with a long horizontal stroke at the end.

M. Jeff Hagener, Administrator
Lands Administration Division

c. Marylee Norris



United States Department of the Interior

FISH AND WILDLIFE SERVICE

CHARLES M. RUSSELL NATIONAL WILDLIFE REFUGE
P.O. BOX 110
LEWISTOWN, MONTANA 59457
(406) 538-8706



February 4, 1993

Senator John Hertel
Capital Station
Helena, Mt 59620

Re: Senate Bill 252 To Exempt Professional Land Surveyors from Criminal Trespass Law

Dear Senator Hertel:

The U.S. Fish and Wildlife Service supports the effort to create a law to exempt professional land surveyors from criminal trespass. The FWS had to survey property in Garfield County last year to locate the property line between the Government and a hostile landowner. The potential threat of trespass charges prevented the surveyors from locating survey monuments within the private property. The situation required locating more distant monumentation on Federal land to complete the survey. This caused the survey work to cost more because substantial additional time was required. Had the situation been a little different and alternate monumentation not been available, it would have been impossible to complete the survey.

In addition to the legal aspects of being able to do a survey, the surveyors were subjected to harassment by the land owner. This included threats of trespass charges if they crossed onto the owners property and an on site visit by the County Sheriff.

A law to protect surveyors from trespass charges is essential if they are going to be able to perform the necessary work expected of their profession.

If you wish to discuss this further please give me a call.

Sincerely,

John R. Foster
Refuge Manager

cc: (blind) Pat Carson, Reg.Office, Denver
Stewart Nash, Nash Surveying
Craig Roberts, Dept State Lands

SENATE JUDICIARY
EXHIBIT NO. 4
DATE 2-5-93
SB252

Montana Trial Lawyers ASSOCIATION

Directors:

Wade Dahood
Director Emeritus
Monte D. Beck
Thomas J. Beers
Michael D. Cok
Michael W. Cotter
Karl J. Englund
Robert S. Fain, Jr.
Victor R. Halverson, Jr.
Gene R. Jarussi
Peter M. Meloy
John M. Morrison
Gregory S. Munro
David R. Paoli
Paul M. Warren
Michael E. Wheat

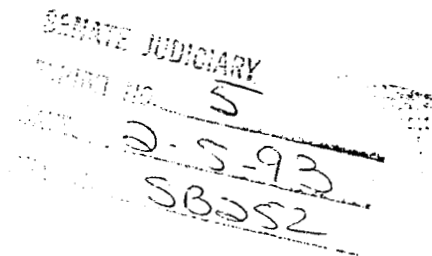
Executive Office
#1 Last Chance Gulch
Helena, Montana 59601
Tel: 443-3124

February 5, 1993

Officers:

Thomas J. Beers
President
Monte D. Beck
President-Elect
Gregory S. Munro
Vice President
Michael E. Wheat
Secretary-Treasurer
William A. Rossbach
Governor
Paul M. Warren
Governor

Sen. Bill Yellowtail, Chair
Senate Judiciary Committee
Room 325, State Capitol
Helena, MT 59624



RE: SB 252

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's qualified opposition to SB 252, which establishes civil liability for damages and injury occurring during a land survey. MTLA opposes SB 252 because of several concerns:

1. MTLA believes that SB 252 limits the liability of both parties governed by the bill. It apparently limits the liability of surveyors to "actual damages caused during entry to and stay on the land" (page 4, lines 21-22). Thus, a surveyor apparently incurs no liability for causing non-economic damages such as emotional distress, and he or she apparently incurs liability for "actual damages" only when those damages are caused by "entry to and stay on" the land [emphasis added]. At the same time, even when that surveyor obtains the permission of the landowner and provides extensive information about the survey, he or she apparently has no cause of action for injury or damage caused (but not "purposely or knowingly") by a grossly negligent landowner.

2. MTLA believes that insulating parties such as surveyors and landowners from the consequences of their wrongful acts actually discourages cooperation among those parties, even when they are mutually and equally insulated. On the contrary, MTLA believes that civil liability and enforceable standards of conduct promote cooperation between parties such as surveyors and landowners.

3. MTLA believes that the respective rights and duties of surveyors and landowners can be better balanced in SB 252 by means of the following amendments:

Amendments to Senate Bill No. 252
First Reading Copy

Requested by Russell B. Hill
Montana Trial Lawyers Association

Prepared by Russell B. Hill
February 5, 1993

1. Page 4, line 21.

Strike: "actual"

2. Page 4, line 24.

Following: "purposes"

Insert: "pursuant to this section"

3. Page 5, line 2.

Strike: "purposely or knowingly"

2-5-93
SB252

DATE 2-5-93

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: S.B. 251 - Tax S.B. 252 - Hotel
SB 258 - Harp

Name	Representing	Bill No.	Check One Support Oppose	
TOM MCNAB	Montana Technical Council	SB 252	☒	
STEWART NESH	Montana Assoc. of Registered Land Surveyors	252	☒	
HARRY C. STRONG	MT. ASS. REGISTERED LAND SURVEYORS	252	☒	
JEAN E. STRONG	LAND SURVEYOR	SB 252	☒	
CRUG L. HOPE	MT. MAGISTRATES ASSN	SB 251	☒	
Lawrence A. Hubbard	State Fund	SB 250	☒	X
Virginia Mueller	MT Assoc. of Land Surveyors	SB 252	☒	X
Jaqueline J. Gunnmark	American Ind. Assoc	SB 258	☒	
Don Crum	MMIA, MSGIA, MACO	" "	☒	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, on February 8, 1993,
at 10:00 a.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: NONE

Members Absent: NONE

Staff Present: Valencia Lane, Legislative Council
Rebecca Court, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 264
SB 265
Executive Action: SB 252

HEARING ON SB 264

Opening Statement by Sponsor:

Senator Van Valkenburg, District 30, told the Committee the 1991 session of the legislature adopted provisions with respect to notification of victims in certain crimes upon the release of certain criminals from jail. Senator Van Valkenburg inquired of the sheriff and the local jail commander in Missoula about this issue and how the procedure was being utilized to provide notice to victims as required by law. The sheriff and jail commander were not familiar with the requirements, but upon learning of

Rye said the justice system has serious flaws and problems. Senator Rye said SB 265 is a small attempt to rectify a problem, and urges a DO PASS recommendation.

EXECUTIVE ACTION ON SB 252

Motion:

Senator Grosfield moved to strike sub-section 9 on page 4.

Discussion:

Senator Grosfield said SB 252 is not a liability bill. Subsection 9 is the only place in the bill that refers to liability. Senator Grosfield said it would not hurt SB 252 to strike Subsection 9. Senator Grosfield said SB 252 allows land surveyors authority to gain access to land without being accused of trespassing. Subsection 9 complicates the SB 252, and eliminating subsection 9 does not hurt the bill.

Senator Towe told the Committee he had some proposed language to improve section 9. His concern was authorizing a person to trespass when there may be justification for a person to hold a land surveyor liable for damage that is caused. Senator Towe said if the word "actual" was taken out it would make SB 252 clear that the land surveyor would be liable for damages caused. Senator Towe said it would make more sense in taking out the language on page 5, line 2, "purposefully and knowingly" because it would have improved SB 252.

Senator Grosfield told the Committee land surveyors are liable even without subsection 9. Senator Grosfield said the intent of SB 252 is to give land surveyors the ability to gain access to go on the land, but they would still be liable if damage occurred.

Senator Towe proposed that instead of striking subsection 9, say "nothing contained herein or in this section prevents the liability of an individual who causes damages." Senator Towe said he was concerned if subsection 9 was stricken, SB 252 would imply that land surveyors could not be held responsible for damages.

Senator Halligan said if subsection 9 was taken out, SB 252 would not deal with damages, therefore damages would be covered under current law. Senator Halligan said SB 252 is giving land surveyors, with notice, the exemption of the trespass statute. SB 252 does not talk about civil damages if we take out subsection 9, which is what is desired.

Senator Towe asked Senator Halligan if taking out the trespass prohibition would affect damages. Senator Halligan said damages would not be affected.

Senator Crippen asked Valencia Lane what the land owners liability would be if, because of damages done by a land surveyor, someone else was injured. Ms. Lane said there would be a concern about the liability.

Senator Crippen asked Valencia Lane about the liability of the land surveyor in the same situation. Ms. Lane said it would depend on the facts of the situation. If the land owner had knowledge of the damage prior to the injury, the landowner could be held liable. If the landowner did not have knowledge of the damage he would avoid liability, but it would still be litigated.

Senator Crippen asked Valencia Lane if a land surveyor could be held liable for damage to a third party, even if permission was granted to go on the land. Ms. Lane said yes, because the land owner was not giving permission to go on the land to harm someone. Ms. Lane said the land owner and the land surveyor could both be sued.

Senator Towe asked Ms. Lane if she felt there would be a liability issue if subsection 9 was taken out of SB 252. Ms. Lane said her understanding was SB 252 was not intended to be a liability bill. Ms. Lane said it would be better to take out the provision on liability and make it clear that SB 252 creates a situation that would allow land surveyors to obtain access to property, when otherwise not allowed. Ms. Lane said liability should not be addressed in SB 252.

Senator Halligan told the Committee SB 252 could have a whereas clause that says, "allowing the criminal trespassing exemption simply does not affect the civil damages." Senator Halligan said that would give courts a whereas direction on the intent of SB 252.

Senator Towe concured with Senator Halligan.

Motion:

Senator Grosfield added to the motion to fix the title of SB 252.

Vote:

Motion carried to AMEND SB 252.

Motion:

Senator Towe moved that a sentence be added to the whereas clause, that in affect states, "it is not intended that any immunity to the surveyor be granted as a result of this act."

Vote:

Senator Towe's motion to AMEND SB 252 CARRIED.

SENATE JUDICIARY COMMITTEE

February 8, 1993

Page 8 of 8

Motion/Vote:

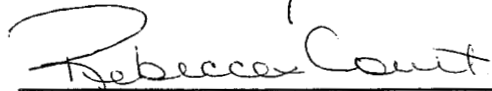
Senator Brown moved SB 252 DO PASS AS AMENDED. The motion
CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 11:00 a.m.



BILL YELLOWTAIL, Chair



REBECCA COURT, Secretary

BY/rc

ROLL CALL

SENATE COMMITTEE Judiciary DATE 2-8-92

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

FC8

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 8, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 252 (first reading copy -- white), respectfully report that Senate Bill No. 252 be amended as follows and as so amended do pass.

Signed: William Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Title, lines 9 and 10.

Following: "LAND;" on line 9

Strike: remainder of line 9 through "SURVEY;" on line 10

2. Page 1, line 17.

Following: "trespass"

Strike: "."

Insert: "; and

WHEREAS, the Legislature does not intend to grant
or abrogate any civil liability or immunity to
professional land surveyors or landowners by [this
act]."

3. Page 2, line 9.

Strike: "-- liability"

4. Page 4, line 20 through page 5, line 3.

Strike: subsection (9) in its entirety

Renumber: subsequent subsection

-END-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN RUSSELL FAGG**, on March 23, 1993, at 9:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Ellen Bergman (R)
Rep. Vivian Brooke (D)
Rep. Dave Brown (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Angela Russell (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Karyl Winslow (R)
Rep. Diana Wyatt (D)

Members Excused: Rep. Jody Bird (D)

Members Absent: Rep. Jim Rice (R)
Rep. Tim Whalen (D)

Staff Present: John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 217, SB 252, SB 260, SB 425
Executive Action: SB 252

HEARING ON SB 217

Opening Statement by Sponsor:

SEN. LORENTS GROSFIELD, Senate District 41, Big Timber, said that SB 217 authorizes the Department of Social and Rehabilitation Services (SRS), Child Enforcement Services Division (CESD) to

TOOLE asked Ms. Wellbank to point to where that exemption is. Ms. Wellbank said it isn't an exemption, this bill only speaks to occupational and professional licenses regulated by the Department of Commerce. It is on page 4, Section 4, "Licensing Agency" which means the Department of Commerce or any other department or board that issues a license under Title 37; this does not include the Supreme Court of Montana. REP. TOOLE urged that the Supreme court include attorneys or a parallel provision that the Supreme court exempt attorneys.

Closing by Sponsor: None

HEARING ON SB 252

Opening Statement by Sponsor:

SEN. JOHN HERTEL, Senate District 15, Moore, said that SB 252 is an important bill for those performing a service involved with surveying. Those people will be licensed surveyors, those who need the survey, and also the landowners who have property next to where the survey is being done. The bill identifies regulations for surveyors.

Proponents' Testimony:

Stewart Nash, past president, Montana Association Registered Land Surveyors, presented written testimony. EXHIBIT 3

Virginia Mueller, local surveyor, Montana Association of Registered Land Surveyors, said she supports SB 252.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. TASH asked SEN. HERTEL why line 9 in the title and subsection (9), page 4 were stricken from the bill. SEN. HERTEL said that language was stricken from the title and moved to page 1, lines 18-20. That same language was also adequately covered in page 4 of the bill.

Closing by Sponsor: None

Questions From Committee Members and Responses: None

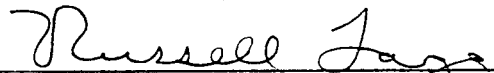
Closing by Sponsor: None

EXECUTIVE ACTION ON SB 252

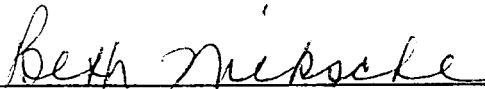
Motion/Vote: REP. TASH MOVED SB 252 BE CONCURRED IN. Motion carried 17-1 with REP. BROWN voting no.

ADJOURNMENT

Adjournment: 11:30 a.m.



REP. RUSSELL FAGG, Chairman



BETH MIKSCHKE, Secretary

RF/bcm

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL

DATE

3-23-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird			✓
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice		✓	
Rep. Angela Russell	✓		
Rep. Tim Savles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen		✓	
Rep. Karyl Winslow	✓		
Rep. Diana Wyatt	✓		

HR:1993

wp.rollcall.man

CS-09

HOUSE STANDING COMMITTEE REPORT

March 23, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that
Senate Bill 252 (third reading copy -- blue) be concurred in .

Signed: 
Russ Fagg, Chair

Carried by: Rep. Tash

Committee Vote:
Yes 17 . No 1 .

651032SC.Hes

DEPARTMENT OF STATE LANDS

EXHIBIT 3
DATE 3-23-93
SB 202



STAN STEPHENS, GOVERNOR

CAPITOL STATION

STATE OF MONTANA

(406) 444-2074

1625 ELEVENTH AVENUE
HELENA, MONTANA 59620

December 4, 1992

Stewart Nash
Past President
P.O. Box 631
Lewistown, MT 59457

RE: Proposed legislation for trespass for survey purposes.

Dear Mr. Nash:

The Department of State Lands (DSL) has reviewed the proposed legislation you asked us to review. The DSL legal staff saw no obvious legal pitfalls and did not see any reason why we could not support the legislation.

The Land Administration Division also reviewed and felt the proposed language looked good. The Division did have some comments which you may wish to consider:

The ten day response time may not be sufficient for public agencies. It may be difficult in some situations for the DSL to respond regarding any stipulations within ten days. You may wish to consider extending this time frame.

A common concern of landowners is off-road vehicle travel. You may wish to consider adding a restriction that vehicular trespass by surveyors is limited to established roads unless pre-approved by the landowner.

Does the "damages" provision include clearing of shrubs, trees and other vegetation? Should this type of activity require pre-approval of the landowner?

Another common concern of landowners regarding trespass is with the spread of noxious weeds. Does the "damages" provision cover the noxious weed issue or should it be covered separately?

Perhaps another consideration which might make the proposal more palatable to landowners would be to provide a copy of the completed surveys to the landowner.

Stewart Nash
December 4, 1992
Page 2

Thank you for the opportunity to review and comment on this proposed legislation. Feel free to contact me if you have questions.

Sincerely,

A handwritten signature in dark ink, appearing to read "M. Jeff Hagener", with a stylized, flowing script.

M. Jeff Hagener, Administrator
Lands Administration Division

c. Marylee Norris



United States Department of the Interior

FISH AND WILDLIFE SERVICE

CHARLES M. RUSSELL NATIONAL WILDLIFE REFUGE
P.O. BOX 110
LEWISTOWN, MONTANA 59457
(406) 538-8706



EXHIBIT #3
DATE 3-23-93
SB-252

February 4, 1993

Senator John Hertel
Capital Station
Helena, Mt 59620

Re: Senate Bill 252 To Exempt Professional Land Surveyors from Criminal Trespass Law

Dear Senator Hertel:

The U.S. Fish and Wildlife Service supports the effort to create a law to exempt professional land surveyors from criminal trespass. The FWS had to survey property in Garfield County last year to locate the property line between the Government and a hostile landowner. The potential threat of trespass charges prevented the surveyors from locating survey monuments within the private property. The situation required locating more distant monumentation on Federal land to complete the survey. This caused the survey work to cost more because substantial additional time was required. Had the situation been a little different and alternate monumentation not been available, it would have been impossible to complete the survey.

In addition to the legal aspects of being able to do a survey, the surveyors were subjected to harassment by the land owner. This included threats of trespass charges if they crossed onto the owners property and an on site visit by the County Sheriff.

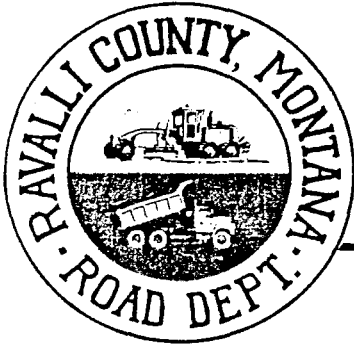
A law to protect surveyors from trespass charges is essential if they are going to be able to perform the necessary work expected of their profession.

If you wish to discuss this further please give me a call.

Sincerely,

John R. Foster
Refuge Manager

cc: (blind) Pat Carson, Reg.Office, Denver
Stewart Nash, Nash Surveying
Craig Roberts, Dept State Lands



Ravalli County Road Department

244 Fairgrounds Road • Hamilton, Montana 59840
(406) 363-2733

COUNTRY ROADS TAKE ME HOME

House Judicial Committee
c/o Stewart Nash
P.O. Box 631
Lewiston, Mt. 59457

February 18, 1993

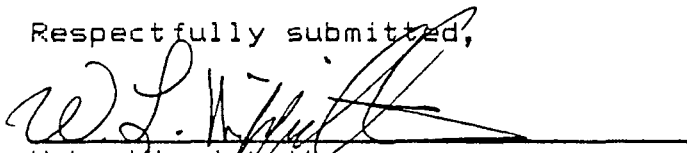
RE: SB 252

I have been engaged in the surveying profession since 1959 and have been a registered professional land surveyor in Montana since 1972. I have operated a survey office in the Bitterroot for 17 years. As such I have, on occasion, had difficulty gaining access to public land survey corners. The result of access denial is no survey or have your client obtain a court order at additional expense and considerable delay.

SB 252 will save time and money for all landowners, not surveyors. Access denial problems encountered by surveyors are simply passed on to clients (landowners) in the form of fees and delays. In order to maintain and preserve the right to ownership of private property we must have a method of determining and maintaining property boundaries. This method should be as simple and as inexpensive as possible.

I support SB 252 and urge you to approve this bill.

Respectfully submitted,


W.L. Higginbotham
Road Supervisor
Montana PLS 37128

CONCERNING AN EXEMPTION TO THE CRIMINAL TRESPASS LAWS FOR CERTAIN
INDIVIDUALS WHO ENTER PROPERTY FOR SURVEY PURPOSES

The absence of the right of entry to the Registered Professional Land Surveyor of Montana, or those who are under the direct supervision of such a person as an employee, agent or representative denies them one of the basic tools by which to competently complete their work and remain within the laws and abide by the rules governing surveys.

Many surveyors have been denied access to private lands, at one time or another, in attempting to conduct surveys for their clientele. This denial may occur at some point of time after a previous illegal trespass by an inconsiderate surveyor, or because of poor relationships between neighbors, a "bad" survey by a previous surveyor - therefore they are all incompetent, or I just don't like the Highway Department and the power company charges to much.

Whatever the reason, ^{for the denial} the land surveyor cannot always determine accurate property corners and boundaries of their client and adjoining properties without having all of the controlling corners and evidence at their disposal.

The Montana Corner Recordation Act 70-22-102 gives the following as its purpose
It is the purpose of this part to protect and perpetuate public land survey corners and information concerning the location of such corners by requiring the systematic establishment of monuments and recording of information concerning the marking of the location of such public land survey corners and to allow the systematic location of other property corners thereby providing for property security and a coherent system of property location and identification of ownerships and thereby eliminating the repeated necessity for reestablishment and relocations of such corners where once they are established and located.

When this purpose is denied by a land owner, it is also a denial for the land surveyor to carry out the guidelines as outlined in the Professional Engineers and Land Surveyors Laws and Rules Sub Chapter 12, Rules of Professional Conduct 8.48.1202 SAFETY, HEALTH AND WELFARE OF THE PUBLIC PARAMOUNT IN THE PERFORMANCE OF PROFESSIONAL DUTIES

(1) Registrants shall hold paramount the safety, health and welfare of the public in the performance of their professional duties.

(a) Registrants shall at all times recognize that their primary obligation is to protect the safety, health, property and welfare of the public. If their professional judgement is overruled under circumstances where the safety, health, property or welfare of the public are endangered, they shall notify their employer or client and such other authority as may be appropriate. *Access denial to perform accurate surveys is overruling the surveyors best judgement and is a detriment to the public We*

The following State and Federal regulations including pertinent definitions are the basic laws in which a Registered Professional Land Surveyor must adhere to, in effort to carry out the previous regulation.

PROFESSIONAL ENGINEERS AND LAND SURVEYORS LAWS AND RULES

Definitions 37-67-101(7) "Practice of Land Surveying" means any service or work, the performance of which requires the application of special knowledge of the principles of mathematics, physical sciences, applied sciences and:

- (a) the principles of property boundary law to the recovery and preservation of evidence pertaining to earlier land surveys;
- (b) measurement and allocation of lines, angles, elevations and coordinate systems;
- (c) monumenting of property boundaries;

Definitions 70-22-103

- (1) A "property corner" is a geographic point on the surface of the earth and is on, a part of, and controls a property line.
- (2) A "property controlling corner" for a property is a public land survey corner or any property corner which does not lie on a property line of the property in question but which controls the location of one or more of the property corners of the property in question. *These controlling corners are the key to most surveys*
- (3) A "public land survey corner" is any corner actually established and monumented in an original survey or resurvey used as a basis of legal description for issuing a patent for the land to a private person from the United States government.
- (4) A "corner", unless otherwise qualified, means a property corner or a property controlling corner or a public land survey corner or any combination of these.
- (5) An "accessory to a corner" is any exclusively identifiable physical object whose spatial relationship to the corner is recorded. Accessories may be bearing trees, bearing objects, monuments, reference monuments, line trees, pits, mounds, charcoal-filled bottles, steel or wooden stakes, or other objects.
- (6) A "monument" is an accessory that is presumed to occupy the exact position of a corner.
- (7) A "reference monument" is a special monument that does not occupy the same geographical position as the corner itself but whose spatial relationship to the corner is recorded and which serves to witness the corner.

MONTANA'S SUBDIVISION AND SURVEYING LAWS AND REGULATIONS

Chapter 3, Part 4 - Survey Requirements 76-3-402(3) All divisions of sections into aliquot parts and retracement of lines must conform to United States Bureau of Land Management instructions, *over*

SUB-CHAPTER 30 - UNIFORM STANDARDS FOR MONUMENTATION, CERTIFICATES OF SURVEY AND FINAL SUBDIVISION PLATS.

8.94.3001 (c) Prior to the filing of any subdivision plat or certificate of survey for record the land surveyor shall confirm the location of sufficient monuments to reasonably assure the perpetuation or reestablishment of any corner or boundary or retracement of the survey -----.

(e) The plat or certificate shall clearly show the relationship of all adjacent monuments of record and the relationship of the monuments of record to monuments set after filing.

(h) If the land surveyor uses any previously established monument he must confirm the location of the monument. If properly confirmed and shown and described on the filed certificate or plat, such a monument shall be considered a monument of record.

CORNER RECORDATION ACT

70-22-110 Surveyor to rehabilitate monument. In every case where a corner record of a public land survey corner is required to be filed under the provisions of this part, the surveyor must reconstruct or rehabilitate the monument of such corner and accessories to such corner so that the same shall be left by him in such physical condition that it remains as permanent a monument as is reasonably possible and so that the same may be reasonably expected to be located with facility at all times in the future.

EXHIBIT #3
DATE 3-23-93
SB-252

MANUAL OF SURVEYING INSTRUCTIONS 1973
U.S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT,

THE DEPENDANT RESURVEY

6-25 The dependent resurvey is designed to restore the original conditions of the official survey according to the record. It is based, first, upon identified original corners and other acceptable points of control, and, second, upon the restoration of lost corners by proportionate measurement in harmony with the record of the original survey.

5-6 The recovery of previously established corners is simplified by projecting retracements from known points. The final search for a monument should cover the zone surrounding one, two, three, or four points determined by connection with known corners. These corners will ultimately control the relocation in case the corner being searched for is declared lost.

5-8 No decision should be made in regard to the restoration of a corner until every means has been exercised that might aid in identifying its true original position. The retracements will indicate the probable position and will show what discrepancies are to be expected. Any supplemental survey record or testimony should then be considered in the light of the facts thus developed.

The supplement to the 1973 Manual "Restoration of Lost or Obliterated Corners and Subdivision of Sections " States on page 25 under FUNCTION OF THE LOCAL SURVEYOR. --- His work may be simple, or quite complex, depending largely upon the existence of the original corner monuments or acceptable perpetuations of the corner positions.

Since the corners established in the original survey are controlling, it is essential that these corners be found, or properly restored, before the actual field work involving the subdivision-of-section is undertaken. The section boundaries should be retraced to develop the actual bearing and lengths of the lines between the corners. *back*

These regulations are paramount procedures by which the professional land surveyor performs their field work. The necessity to gain entry onto any lands that contains evidence which will aid in the proper restoration or identification of corners and monuments, is of the utmost importance.

By gaining this much needed tool, the surveying profession will be obligated to exercise care and proper restraint, respecting the property over which they perform surveys. They should be held responsible for any damages incurred upon entering private lands and should enter only after proper notification.

The following proposed bill is a serious attempt to address these concerns.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB 252
DATE 3-23-93 SPONSOR(S) J. Huter
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<u>Box 631 Lewistown</u> <u>Stewart Nash</u>	<u>MARLS</u>	☒	☐
<u>Virginia Mueller</u> <u>3820 Barrett Rd, Helena</u>	<u>MARLS</u>	☒	☐

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE ON SENATE BILL 252

Call to Order: By Senator Steve Doherty, on April 14, 1993, at 12:20 p.m.

ROLL CALL

Members Present:

Senator Steve Doherty (D)
Senator Bill Yellowtail (D)
Senator John Hertel (R)
Representative Royal Johnson (R)
Representative Ray Brandewie (R)

Members Excused: Diana Wyatt

Members Absent: None

Staff Present: Valencia Lane, Legislative Council
Sylvia Kinsey, Secretary

Discussion:

Chair Doherty explained the bill as exempting a professional land surveyor or other qualified person from the criminal trespass law when entry to land is for survey purposes and providing liability for damages and injury occurring on the land during the survey.

Representative Brandewie was concerned about landowner liability during a survey. He pointed out he felt the surveyor should be liable for damage done to a landlord's property during the survey. He pointed out that if a surveyor went into a pasture with cattle it was common sense to realize there could be a bull in the pasture and the landowner should not be liable if he surveyor is injured by a bull in that case. A surveyor on land should be responsible for trees damaged or cut, run away vehicles, and common sense.

Senator Hertel read parts of Section 2 (3) of the bill, reference copy. He said the approval of the land owner is required, Section 2 (7) for the clearing of trees, brush or other vegetation.

Representative Brandewie said he thought the language should be changed a little but the surveyor should be held responsible for anything that happens on the land while he is there.

Representative Johnson asked Ms. Lane about the language in the House amendment 4, green copy attached to bill, and she said the language as originally drafted had been taken out of the bill and common law would now apply.

Representative Brandewie defended his amendment saying it put language in the bill to make sure the landowner was protected. Ms. Lane said she believed the language that was in here was limiting the liability of a surveyor. The language that was originally drafted was removed by the Senate and if we do not put anything in the bill, she believed common law would take care of it, but putting this amendment language in puts a limitation on the liability because it says liable for "actual" damages only.

Representative Brandewie said this amendment protects the land owner from action. Ms. Lane explained the language in the bill and the addition of the amendment again.

Representative Brandewie read the amendment again and said he did not believe there should be any cause for action by someone if he is on your property and he falls or stumbles over an old barbed wire fence and the land owner should not be liable for this type of accident.

There was further discussion on whether the land owner or the surveyor should be protected. Representative Brandewie asked which gave the land owner the most protection. He said he could not see why he should have any liability because a surveyor came on his property because a neighbor was surveying a property line. He said he would like to strike everything on line 8 through "land" on line 10 (page 5) and beginning with "A" on line 10 through "lessee" on line 16.

Ms. Lane said you have two provisions. The first is limiting the liability of the surveyor and if we take that sentence out then the surveyor would be subject to common law. The second sentence relates to the liability of the land owner and the way it is written it is pretty protective of the land owner, but you have to consider do you want to protect the land owner to the total exclusion of the surveyor. The policy decision to be made is if you take the first sentence, you are not talking about the surveyor's liability any more, you are only talking about a policy decision on how you want to address the landowner's liability.

Representative Johnson asked if the surveyor's liability is covered anywhere else in the bill and Ms. Lane answered no.

Chair Doherty said that is the whole issue. The purpose of the bill is that surveyors need access on occasion. But adding the whole question of liability, one way or the other, you are changing the common law and if you change the common law he said it would be his preference that you change it so it is even up on both sides. If a surveyor causes problems to the land owner the

surveyor is liable and if the land owner in some way causes problems for the surveyor, by adding this in, if you start messing with the liability with the one, you have to deal with the liability of the other.

Senator Yellowtail said his question would be, under the existing liability law, what is the exclusion of the surveyor in the first place. Russell Hill, Trial Lawyers, said he believed the issue is the land owner liability and the terms "purposely and knowingly" are out of criminal law. He gave the example if a land owner left traps and knows where they are but forgets to tell the surveyor, under the language now the land owner will not be liable to that surveyor, whereas a trespasser on the land he could be. The removal of the language "purposely and knowingly" would take care of that problem.

Representative Brandewie said the surveyor should have some protection against damages that were purposely and knowingly caused, but he was talking about the unknown. The things that can happen out there and the land owner cannot be responsible to know every hazard there is on a large piece of property.

Ms. Lane said the land owner would not be liable for negligence, but would be if the surveyor were injured by the landowner acting knowingly and willingly. The surveyor would have to prove a point, almost to the point where the land owner intended to harm him, under this language. Under this law the landowner would have to be aware the danger was there and you would have to prove a high standard. Under the current law the land owner would be in the same position as anyone else that crossed your land. They would all be under the same standard.

Senator Hertel said the purpose of this bill is the speed of the process for the surveyor. We are not out there trying to gain advantage over the land owner. His suggestion is to try to get some conditions in law.

Chair Doherty said the way to go back to the original law is to strike the whole section dealing with immunity, either for the surveyor or for the land owner.

Senator Yellowtail said he is persuaded in the existing law, as described here, the land owner is well and adequately protected for liability and thought there was a need to further elaborate on that here and set up some limitations on the land owners protection.

Representative Brandewie pointed out that if someone did get injured, attorneys for both sides gain and the land owner loses. There is no way the land owner can win in this, he was just trying to make sure he didn't lose. He thought the land owner needs some consideration in this bill.

Representative Johnson asked, since the intent of the bill is to

speed up the process, how does this bill do it.

Senator Hertel said a surveyor can get access to land by going to the land owner by just a request. There is a certain procedure if the land owner will not give him access. You are trying to circumvent that procedure. Representative Johnson said it seemed to him that was the land owner's prerogative. He said he had never seen a surveyor that didn't get access. He had spent money on surveying and couldn't see the problem. If he had not wanted him on the land he could have said so.

Senator Yellowtail said you could vote against the bill if you wish, but the issue in front of this conference committee is this matter of liability separate from the issue you just described.

Representative Brandewie referred to language on page 5. Chair Doherty asked if he was suggesting taking the first sentence out and was told yes. He said he had some language that talks about a rebuttable presumption and maybe have two options. One could take out "purposely and knowingly" and the other talks about creates a "rebuttable presumption" that the landowner or lessee properly protected the person against personal injury. He thought that gives the presumption to the land owner that the land owner is protected but still allows the surveyor the opportunity to overcome that presumption.

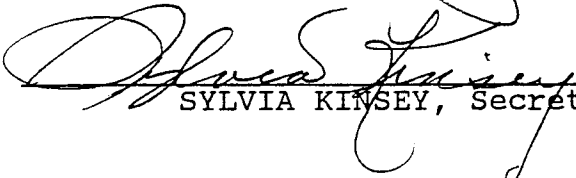
Chair Doherty asked Ms. Lane to get the amendment on rebuttable presumption worked up and it could be looked at and evaluated. If it is okay we can go ahead and if it needs some changes we can meet again tomorrow.

A copy of the proposed amendment (exhibit 1) was given to the secretary on April 15 and is attached to the minutes.

ADJOURNMENT

Adjournment: 1:12 p.m.


STEVE DOHERTY, Chair


SYLVIA KINSEY, Secretary

SD/sk

(FREE) CONFERENCE COMMITTEE

DATE 4/13/93

[illegible]

efw1
Amendments to Senate Bill No. 252
Reference (as amended) Reading Copy

Requested by Free Conference Committee on SB 252

Prepared by Valencia Lane
April 15, 1993

1. Title, lines 10 through 12.
Following: "~~SURVEY~~," on line 10
Strike: remainder of line 10 through "SURVEY;" on line 12
Insert: "CREATING A REBUTTABLE PRESUMPTION REGARDING A
 LANDOWNER'S LIABILITY TO A SURVEYOR ON LAND FOR SURVEYING
 PURPOSES;"
2. Page 5, lines 8 through 10.
Following: "(9)" on line 8
Strike: remainder of line 8 through "LAND." on line 10
3. Page 5, line 10.
Strike: "A"
Insert: "Entry upon land for survey purposes by a"
4. Page 5, lines 11 through 16.
Following: "(1)" on line 11
Strike: remainder of line 11 through "LESSEE" on line 16
Insert: "creates a rebuttable presumption that the landowner or
 lessee properly protected the person against personal injury
 or property damage while the person was on the land"